IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No.787 of 2006

M/s.Padmavati N. Group .. Appellant

versus

Union of India & Ors. .. Respondents

...

Mr.V.A.Thorat,Sr.Counsel i/b Mr.Uday Warunjikar for the appellant.

Mr.Girish Kulkarni with Ms.Swati Deshpande for the respondents.

W I T H

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versus

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Mr.Y.S. Jehagirdar i/b Mr.Uday Warunjikar for the appellant.

Mr.Girish Kulkarni with Ms.Swati Deshpande for the respondents.

CORAM : D.G. KARNIK, J

DATED : 29th November 2006

P.C.:

1. Heard counsel for the parties.

2. After the counsel were heard for some time, it was apparent that certain procedural requirements have not been strictly complied with. Both the suits were filed without issuance of a notice under section 80 of the Code of Civil Procedure. Undoubtedly, an application was made in each of the suits for a leave under section 80(2) for permission to institute the suits without notice. The Court, however, did not pass any orders on the said applications under section 80(2) but proceeded to consider the application for injunction on merits. In my view, this could not have been done. The Court ought to have considered the applications u/s.80(2) and either granted the leave or if it was of the view that leave should not be granted, then followed the procedure under proviso to section 80(2) of the Code of Civil Procedure.

3. It appears that after the suits were instituted, separate applications were made in each of the suits for

amendment of the plaint and I am informed at the bar that the applications for amendment were allowed and the amendment was carried out. A question would also arise whether the court could have granted the leave u/s.80(2) to institute the suits in the amended form. Certain additional reliefs have been claimed by an amendment. If they were claimed originally, the Court could have taken a different view while considering the question of granting leave under section 80(2) of the Code of Civil Procedure.

4. In view of these facts, counsel for the parties agree that the matters may be remanded back to the trial court for decision afresh in accordance with law after considering the appellant’s applications u/s.80(2) on their own merits on the basis of the amended plaint. Needless to say that if the said applications are granted, the court would proceed with the hearing of the applicatoins for interim injunctions on their own merits. However if the Court is of the view that leave u/s.80(2) should not be granted, it would have to follow the procedure under proviso to sub-section(2) of section 80.

5. Learned counsel for the appellants submit that the appellant should be protected for some time to enable

them to move the court for obtaining of a leave under section 80(2). As a condition of such protection, the appellants through their respective counsel undertake to this court that they would not use the suit land for any purposes prohibited under the Indian Forest Act 1927 or the Forest (Conservation) Act 1980 or any of the Rules framed under the said two Acts and shall not cause any damage to the property nor remove any forest produce. Undertaking is recorded and accepted. In view of this undertaking, the respondents are restrained for a period of three weeks from taking any action in pursuance of the impugned show cause notices issued by them. Needless to say if any breach of the conditions of lease/grant/licence is committed, the respondents are free to take action after issuing a separate show cause notice.

6. Learned counsel for the respondents submits that the appellants have committed a breach of the order of status quo dated 15th November 2006. If so, the respondents are free to take appropriate action for the said breach.

7. Both the appeals are disposed of in the aforesaid terms.

(D.G. KARNIK, J)